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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91173105
Party	Plaintiff Honda Motor Co., Ltd.
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Attachments	opposition to motion to strike dalton dep.pdf (4 pages)(123739 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/339,571

Published: May 30, 2006 at TM 674

Mark: DEALERDASHBOARD

HONDA MOTOR CO., LTD.,)	Opposition No. 91/173,105
)	
Opposer,)	
)	
v.)	
)	
MICHAEL DALTON,)	
)	
Applicant)	

**OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO STRIKE
DISCOVERY DEPOSITION OF MICHAEL DALTON**

Applicant's motion to strike the discovery deposition of Michael Dalton lacks merit and should be denied in its entirety.

The trademark rules did not obligate Opposer Honda Motor Co., Ltd. to provide a copy of the deposition transcript to the Applicant for review prior to filing the Notice of Reliance. The burden to review the transcript rested solely with Applicant. Applicant was represented by counsel at his deposition on May 5, 2008. *See* Aff. of Jonathan P. Dameron attached as Ex. 1 to Applicant's Mot. to Strike. At that time, Applicant and/or his counsel, had an opportunity to request a copy of the transcript. Indeed, Applicant admits that he "advised the court reporter that he did wish, in fact, to review the discovery deposition." *See* Mem. In Supp. Mot. to Strike at 2. That Applicant failed to obtain and review the transcript cannot be held against Opposer.

Applicant's reliance on 37 C.F.R. 2.123(e)(5) is misplaced. This rule only applies to oral deposition testimony taken during the party's testimony period. Rule 37 C.F.R. 2.123 states in

its preamble “**Trial testimony** in inter partes cases...” (emphasis added) and 37 C.F.R. 2.123(e)(1) further states “Each witness before **testifying**” (emphasis added). While Rule 37 C.F.R. 2.123(e)(5) does not apply to discovery depositions, Rule 37 C.F.R. 2.120, which has the preamble “Discovery” does, and 37 C.F.R. 2.120(j)(1) states, in part: “the discovery deposition of a party ... may be offered in evidence by an adverse party.” And (j)(2) further states, in part: “...A discovery deposition... may be made of record in the case by filing the deposition or any part thereof with any exhibit to the part that is filed...together with a notice of reliance.” Mr. Dalton’s deposition was taken during the discovery period and was offered into evidence through Opposer’s Notice of Reliance further to 37 C.F.R. 2.120(j)(1). This Rule does not provide that a discovery deposition transcript must first be signed before it is submitted as part of the Notice of Reliance by an adverse party.

In addition, Applicant misquotes 37 C.F.R. 2.120(j)(6) and inappropriately interprets the rule as mandating that he be given the opportunity to “read over” the transcript. Applicant is misguided. The rule states: “Paragraph (j) of this section will not be interpreted to preclude the reading or the use of a discovery deposition, or answer to an interrogatory, or admission as part of the examination or cross-examination of any witness during the testimony period of any party.” Contrary to Applicant’s interpretation, this rule is meant to give parties the ability to use prior deposition transcripts as a means to impeach a witness during the testimony period.

Finally, the Board should disregard Applicant’s statement that “Opposer has made no initial disclosures.” The current opposition was filed on September 27, 2006. As such, the new rules requiring the parties to exchange initial disclosures is inapplicable.

Accordingly, Opposer respectfully requests that the Board deny in its entirety Applicant’s motion to strike the deposition transcript of Michael Dalton.

Date: March 18, 2009

Respectfully submitted,

WILMER CUTLER PICKERING
HALE AND DORR LLP

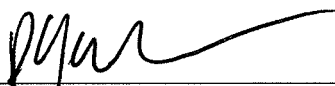


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Certificate of Service

I hereby certify that a true and complete copy of the foregoing Opposition to Applicant's Motion to Strike Discovery Deposition of Michael Dalton has been served by e-mail and first class mail to:

Michael Dalton
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Cincinnati, OH 45218-0137



Dyan Finguerra-DuCharme